

RETURN DATE: DECEMBER 18, 2007

SUPERIOR COURT

BRIAN L. HOLLANDER

J.D. OF HARTFORD

VS.

AT HARTFORD

PETER K. TRZYNA AND PTK NOVEMBER 13, 2007  
TECHNOLOGIES, LLC

### **COMPLAINT**

#### **INTRODUCTION**

This is an action by the minority (5%) member of a two-member limited liability company against the individual who is the majority (95%) member and the LLC's sole manager. The plaintiff sues both individually and derivatively on the LLC's behalf. As set forth in this complaint, the defendant has caused substantial loss and damage to the plaintiff and/or to the LLC or both, due to his willful misconduct and conduct that amounts to a bad faith violation of the implied covenant of good faith and fair dealing. Indeed, the plaintiff's economic interest in the LLC has been destroyed as a result of the defendant's conduct.

#### **PARTIES**

1. The plaintiff is Brian L. Hollander ("Hollander"), a resident of Bloomfield, Connecticut.

2. The individual defendant is Peter K. Trzyna ("Trzyna"), an Illinois resident.

3. PTK Technologies, LLC ("the LLC"), is the limited liability company involved in this litigation. The LLC was organized and operates under Delaware law. Its principal place of business is in Illinois. The LLC is a nominal defendant in this action.

#### **PERSONAL JURISDICTION**

4. The court can exercise personal jurisdiction over Trzyna pursuant to § 52-59b of the Connecticut General Statutes since he transacts business within Connecticut and this action arises out of business he transacted here.

5. The facts that create this jurisdiction are included in the ensuing paragraphs of this complaint.

#### **FACTS COMMON TO ALL COUNTS**

6. Hollander met Trzyna in or about 1999. At the time, Hollander was operating a company in Hartford known as DirectAdvice.com ("DirectAdvice"). Trzyna was a Chicago-based patent attorney with a national practice who had come to Connecticut to provide advice and counsel to DirectAdvice on patent matters. Between 1999 and the beginning of 2003, Trzyna regularly communicated with Hollander and other DirectAdvice employees in Hartford on patent matters. Trzyna also sent invoices

to DirectAdvice in Connecticut seeking payment for his services. DirectAdvice wrote checks in Connecticut to pay these invoices.

7. In January 2003, DirectAdvice sold its business to Mellon Financial ("Mellon"). Hollander then became a consultant to Mellon and worked in that capacity from an office in East Hartford. Trzyna continued to communicate with Hollander on patent matters for DirectAdvice while Hollander was a consultant to Mellon in East Hartford.

8. Beginning in or about the second quarter of 2003, while Hollander was a consultant to Mellon, Trzyna called into Connecticut to communicate with Hollander concerning a certain patent he owned, U.S. Patent, No. 5,956,491 ("the 491 Patent"). He told Hollander that the 491 patent was entitled "Group Communications and Multiplexing System;" that it had application to the telecommunications industry and that it was worth millions, perhaps even a billion dollars. Trzyna also told Hollander at or about this time that he was negotiating with a large, national company ("the Company") concerning a possible business transaction involving the 491 Patent. Among other things, Trzyna told Hollander that the transaction, if completed, would result in the Company funding Trzyna in a first action to enforce the 491 Patent, with the Company and Trzyna sharing in the profits of that endeavor. The transaction would also result in

the Company providing additional money to Trzyna to use at his discretion. And it would further result in the Company transferring to Trzyna one or more of the issued patents and/or patent applications it owned.

9. During the discussions concerning the 491 Patent, Trzyna told Hollander that he had been negotiating with the Company for this transaction for about a year, but with no success. He admitted that he was not capable of bringing the transaction to fruition and asked Hollander for his help in this regard. Not only did Trzyna ask Hollander to negotiate the business deal with the Company, he also asked Hollander to help him form an entity to contract with the Company, help select a law firm to handle the first action to enforce the 491 Patent and establish a banking relationship for the new entity. In return, Trzyna promised Hollander 5% of the new entity, which Trzyna said could be worth as much as \$50 million. Based on Trzyna's representations, Hollander accepted Trzyna's offer.

10. Hollander successfully completed the tasks he agreed to perform. Specifically, he helped Trzyna form the entity to contract with the Company; namely, the LLC. He participated in selecting the law firm of McAndrews, Held & Malloy, Ltd. ("MHM") to handle the first enforcement action. He took the lead in negotiating an agreement with the Company that guaranteed the LLC \$6 million for legal fees and

expenses incurred in enforcing the 491 Patent, a \$1million non-recourse loan to the LLC for the LLC to use at its discretion, the Company's transfer to the LLC of the ownership of two of its patents and one of its patent applications and the establishment of proper bank accounts for the LLC. The agreement is dated January 7, 2004.

12. The LLC was formed in part through calls and e-mails from Trzyna to Hollander in Connecticut. The legal work to form the LLC was performed entirely in Connecticut by a Connecticut attorney. In connection with the formation of the LLC, Trzyna made telephone calls and sent e-mails into Connecticut to the Connecticut attorney.

13. At or about the time Trzyna and Hollander were in the process of forming the LLC, they negotiated an Operating Agreement for the LLC. The Operating Agreement was effective January 1, 2004.

14. Pursuant to Article VII of the Operating Agreement, a Manager was to manage the LLC's business and affairs. Trzyna was to be the initial Manager. In fact, Trzyna has been the only manager the LLC has ever had.

15. Pursuant to this same Article, the Manager was to perform his duties "in good faith, in accordance with his . . . fiduciary duties under Delaware law, in a manner

he . . . believes to be in the best interests of the [LLC] and with such care as an ordinarily prudent person in a like position would use under similar circumstances."

16. Trzyna knew that this provision delineating the Manager's duties was crucial to Hollander, as a minority member, and that Hollander's reasonable expectation in entering into this business with him was that he (Trzyna) would perform his duties with the utmost good faith, that he would scrupulously adhere to the fiduciary duties the law imposed upon him as to both the LLC and the minority member, and that despite his 95% membership interest, he would always exercise care – the care of an ordinarily prudent person – in managing the LLC's affairs so that the minority member's return would be equal to or better than Trzyna had represented or at least not frittered away. Trzyna thus knew that any significant departure from these standards would frustrate Hollander's reasonable expectations in entering into the relationship and cause damage to the LLC and, hence, to Hollander.

17. Shortly after the LLC was formed, in mid-2004, Trzyna and Hollander decided to commence the first action to enforce the 491 Patent. The LLC used the MHM law firm in this regard. The defendant was a large national company (the Second Company"). In or about March of 2007, the LLC reached an agreement with the

Second Company to settle the lawsuit under terms, including the amount involved, that Hollander believes to be confidential.

18. Before and after the time of the settlement, however, Trzyna engaged in numerous acts that violated his duties as Manager, thwarted Hollander's reasonable expectations in entering into this business with him and damaged both the LLC and Hollander.

**The Donovan Application, the Bretscher Patents and the Continuation Application Strategy**

19. First, Trzyna wasted the LLC's limited resources in a grossly negligent pursuit of patent prosecutions arising from the patent application the LLC had acquired from the Company. The subject patent application is U.S. Application No. 09/385,3802, titled "Universal Instant Messaging System for the Internet," including amendments, continuations, continuations in part, re-issuances, reexaminations and other patents claiming priority therefrom. It is also referred to as "the Donovan application" because it was invented by an individual named Donovan.

20. Pursuant to the agreement with the Company, the LLC had no obligation to do anything with the Donovan application. Moreover, after acquiring this application, the LLC discovered that a Microsoft entity had already received a patent generally

related to the technology claimed in the Donovan application. There is a procedure in patent law called an interference by which a patent applicant can challenge an existing patent and have that patent revoked if the applicant establishes that he was the first to invent the technology. The LLC took preliminary steps in the United States Patent Office for the purpose of provoking an interference with Microsoft. The preliminary proceeding is ongoing. Nevertheless, with the outcome of the interference uncertain, Trzyna decided on his own to use the LLC's limited funds to write and file with the Patent Office several additional continuation applications in an ill conceived attempt to expand the scope of the Donovan application beyond its intended purpose when initially written.

21. No reasonable person in a like position would have thought that the filing of these continuation applications could succeed or was otherwise in the LLC's best interest. The inventor refused to cooperate with Trzyna in this regard, and Trzyna admittedly lacked the requisite technology background and expertise to write new claims based on the Donovan application. Knowing this, Hollander vociferously opposed Trzyna's continuation application strategy. Trzyna nonetheless persisted with his strategy. On the LLC's behalf, he engaged expensive technology consultants to assist in the preparation of these applications, resulting in the unwarranted dissipation



of the LLC's limited resources. And when these consultants failed to give Trzyna the answers he wanted, Trzyna spent even more of the LLC's limited resources on different consultants.

22. Since April 2004, Trzyna has filed at least five continuation applications based on the Donovan application. Two have been abandoned: three are pending. None have come close to succeeding.

23. Despite his lack of inventive expertise and Hollander's vociferous opposition, Trzyna followed a virtually identical approach with the patents acquired from the Company, U.S. Patent, Nos. 6,175,854 and 6,370,564, both titled "Computer System Architecture and Method for Multi-user Real Time Application," including amendments, continuations, continuations in part, re-issuances, reexaminations and other patents claiming priority therefrom. Like the Donovan application, these patents relate to the telecommunications industry. Like the Donovan application, the patents are referred to using their inventor's name, in this case, "the Bretscher Patents."

24. Since April 2004, Trzyna has filed at least nine continuation applications based on the Bretscher Patents, all without success.

25. Trzyna further filed a continuation application based on the 491 Patent, despite his lack of expertise, advice not to do so and Hollander's strongly asserted

reservations due to Trzyna's highly suspect prosecution strategy. The application involved the writing of approximately one thousand new claims in the 491 continuation application. Even though Trzyna knew the inventor of the 491 patent, he failed to involve him in the preparation of these claims. Not surprisingly, this continuation application suffered the very same fate the other Trzyna-filed continuation applications suffered; it failed.

26. On information and belief, Trzyna has authorized the expenditure of a substantial portion of the \$1M of discretionary funds the LLC received from the Company to finance the preparation and filing of the ill-conceived continuation applications based on the intellectual property acquired from the Company.

**The Foregone Opportunity With the Company**

27. Another act Trzyna performed that violated his duties as Manager, thwarted Hollander's reasonable expectations and damaged both the LLC and Hollander concerned a decision Trzyna made during the period leading up to the LLC's settlement with the Second Company.

28. Under its arrangement with the Company, the LLC was obligated to pay the Company the first \$7 million of any funds it received from a disposition of the case against the Second Company, plus 50% of any amount over \$7 million. Fearful that

Trzyna would cause the LLC to reject the proposed settlement with the Second Company, Hollander negotiated with the Company for the Company to pay the LLC a substantial additional sum if and when the case against the Second Company settled. This additional sum would have been additional discretionary funds for the LLC and should have been an additional inducement to Trzyna to accept the proposed settlement with the Second Company. The Company was willing to pay a substantial additional sum to the LLC, but demanded that the LLC, in return, relinquish any further patent claims the LLC had against it. Since these further claims were of little or no merit, there was no sane reason for the LLC to pursue them. Moreover, the LLC was not in a position to pursue these claims in any event because Trzyna's improper management had rendered it financially unable to do so. In short, there was no sane reason for Trzyna to refuse what for all intents and purposes was a substantial windfall from the Company.

29. Trzyna ultimately agreed to settle the litigation against the Second Company, as the public record reflects, but refused the opportunity presented for the LLC to receive the substantial additional sum that the Company was willing to pay, because he was unwilling to allow the LLC to relinquish its unmeritorious patent claims against the Company.

30. In sum, for no sane reason, Trzyna caused the LLC to forego the opportunity to receive a substantial additional sum outright.

31. As a result of Trzyna's conduct, the LLC has dissipated nearly all of the discretionary funds it received from the Company, passed up the opportunity to acquire a substantial additional amount of discretionary funds and remains committed to the continued dissipation of any money it received from the settlement with the Second Company. The LLC has not only failed to distribute anything to Hollander since its inception, it has been run by Trzyna as if he has no obligation to make money for the LLC or to generate distributions for its members.

**FIRST COUNT (Intentional Breach of Contract As To Hollander)**

1. Paragraphs 1-31 of this Complaint are incorporated in and made paragraphs 1-31 of this First Count.

32. In engaging in the conduct described above, Trzyna knew that he was acting negligently as a Manager, indeed, that his managerial conduct was grossly negligent and in reckless disregard of the LLC's interests. Therefore, by engaging in this conduct, he intentionally breached the Operating Agreement he made with Hollander.

33. Hollander has been damaged as a result of Trzyna's intentional breach of contract.

**SECOND COUNT (Intentional Breach of Fiduciary Duty Owed To Hollander)**

1. Paragraphs 1-31 of the First Count are incorporated in and made paragraphs 1-31 of this Second Count.

32. In engaging in the conduct described above, Trzyna intentionally violated the fiduciary duty he owed as the LLC's majority owner and Manager to the minority owner, Hollander. Specifically, Trzyna performed the acts in question with the intention of frustrating Hollander's expectations in going into business with him, including, but not limited to the expectation that Trzyna would manage the LLC's affairs so as to enhance, or at least not fritter away, Hollander's return, as well as the expectation that there would be a return.

33. Hollander has been damaged as a result of Trzyna's intentional breach of his fiduciary duty.

**THIRD COUNT (Bad Faith Violation of the Implied Covenant of Good Faith)**

1. Paragraphs 1-31 of the First Count are incorporated in and made paragraphs 1-31 of this Third Count.

32. By engaging in the conduct described above, Trzyna has acted in bad faith to violate the implied covenant of good faith and fair dealing.

33. He has committed a bad faith violation of this covenant by acting intentionally to frustrate Hollander's reasonable expectations in entering into business with him.

34. Hollander has been damaged by Trzyna's bad faith violation of this covenant.

**FOURTH COUNT (Derivative Action)**

1. Paragraphs 1-31 of the First Count are incorporated in and made paragraphs 1-31 of this Fourth Count.

32. By engaging in the conduct described above, Trzyna has violated duties he owes to the LLC and has caused damage to the LLC.

33. Among other things, he intentionally breached the duties he owes the LLC under the Operating Agreement by knowingly behaving negligently. He has also breached the fiduciary duty he owes the LLC as its Manager. And he has committed a bad faith violation of the implied covenant of good faith and fair dealing by engaging in what amounts to self-dealing – conduct designed to promote his own, individual interests at the expense of the LLC, whose interests he is supposed to treat as paramount.

34. Hollander has not taken steps to secure initiation of the action by the manager. The reasons he has not done so are (1) that the manager would not be inclined to sue himself; (2) that the Manager is clearly interested in the transactions that give rise to the action; and (3) that the Manager has already exhibited antagonism and hostility to the action by refusing to stop his offending course of conduct, let alone

reimburse the LLC for its losses, notwithstanding Hollander's demands that he do so and his threats to sue him if he failed to honor the demands.

**WHEREFORE**, Hollander requests the following relief:

1. Money damages payable to him or the LLC or both;
2. Prejudgment interest payable to him or the LLC or both;
3. Attorneys Fees;
4. Such other and further relief as in law or in equity may appertain in

favor of him or the LLC or both.

**PLAINTIFF,  
BRIAN L. HOLLANDER**

By: 

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His Attorneys

**ATTEST: A TRUE COPY**  


ABRAHAM GLASSMAN  
CLERK OF SUPERIOR COURT  
HARTFORD, CONNECTICUT



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TECHNOLOGIES, LLC

NOVEMBER 13, 2007

**STATEMENT OF AMOUNT IN DEMAND**

Pursuant to General Statutes § 52-91, the Plaintiff states that the amount, legal interest, or property in demand is fifteen thousand dollars or more, exclusive of interest and costs.

PLAINTIFF,  
BRIAN L. HOLLANDER

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ABRAHAM GLASSMAN  
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HARTFORD, CONNECTICUT

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His Attorneys

STATE OF CONNECTICUT )  
COUNTY OF HARTFORD ) SS: HARTFORD,

11/16/07

Then and by virtue hereof, and by direction of the plaintiff's attorney, I made due and legal service upon the within named defendant *Peter K. Trzyzna* by leaving a verified true and attested copy of the original writ, summons and complaint at the office of the Secretary of the State of Connecticut at least twelve days before the session of the Court to which this writ is returnable. Said Secretary is the duly authorized agent and attorney to accept service for the within non-resident defendant in the said Town of Hartford.

ATTEST:



ABRAHAM GLASSMAN  
CT. STATE MARSHAL  
Hartford County